



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 30, 2016

Ms. Cynthia Tynan  
Attorney & Public Information Coordinator  
Office of General Counsel  
The University of Texas System  
201 West 7<sup>th</sup> Street, Suite 600  
Austin, Texas 78701-2902

OR2016-19620

Dear Ms. Tynan:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 624596 (OGC# 170004).

The University of Texas Southwestern Medical Center (the "university") received a request for seventeen categories of information related to several specified entities. You state the university does not maintain information responsive to portions of the request.<sup>1</sup> You state the university has released some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.104 and 552.107 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of Texas Health Resources ("THR"). Accordingly, you state, and provide documentation showing, you notified THR of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from THR. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have reviewed the submitted information and the submitted arguments.

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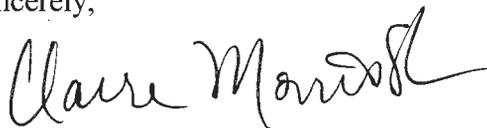
<sup>1</sup>The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

Section 552.104(a) of the Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” *Id.* § 552.104(a). The “test under section 552.104 is whether knowing another bidder’s [or competitor’s information] would be an advantage, not whether it would be a decisive advantage.” *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). The university states it has specific marketplace interests in the information at issue because the university is an academic medical center that delivers high-quality, cost-efficient care and strategically enters into partnerships with other medical providers, including THR and other entities specified in the request for information, to fulfill the university’s educational and research missions. The university explains other hospitals, medical care providers, and universities seek similar opportunities to expand their healthcare offerings, increase the efficiency of their operations, improve quality of care, and enhance research and educational opportunities. The university states release of the submitted information would cause irreparable financial harm to the university by undermining the university’s ability to enter into partnerships to expand its reach in the healthcare marketplace. The university further argues release of the information would enable its competitors to enhance their own positions in a competitive healthcare marketplace, to the detriment of the university. After review of the information at issue and consideration of the arguments, we find the university has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the university may withhold the submitted information under section 552.104(a) of the Government Code.<sup>2</sup>

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/som

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<sup>2</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure of the submitted information.

Ref: ID# 624596

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosures)